



HOUSE OF REPRESENTATIVES

HB 2188

insurance; risk management; solvency assessment

Prime Sponsor: Representative Fann, LD 1

DP Committee on Insurance

DP Caucus and COW

X As Transmitted to the Governor

OVERVIEW

HB 2188 adopts the Own Risk and Solvency Assessment (ORSA) model law as developed by the National Association of Insurance Commissioner's (NAIC) requiring an insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report.

PROVISIONS

ORSA

1. Requires an insurer to maintain a risk management framework, unless the insurer is a member of an insurance group which maintains a risk management framework applicable to the insurer's operations.
2. Directs an insurer or the insurance group to conduct an ORSA at least annually and at any time there are significant changes to the risk profile of the insurer or the insurance group.
3. Requires an insurer or the insurance group, at the request of the director of the Department of Insurance (Director) but not more than once each year, to submit an ORSA summary report.
 - a. The insurer must submit the summary report to the lead state director or commissioner of the insurance group to which the insurer is a member.
4. Specifies the summary report must include a signature of the insurer or insurance group's chief risk officer attesting that the insurer applied the enterprise risk management process and submitted a copy of the summary report to the insurer's appropriate governing committee.
5. Stipulates that an insurer complies with the reporting requirements by providing the most recent and substantially similar report to the director of another state or regulator of a foreign jurisdiction if that report contains information that is comparable to the ORSA guidance manual. Reports must be translated to English as applicable.
6. States the summary report must be prepared consistent with the ORSA guidance manual and made available upon the Director's request.
7. Asserts the review of the summary report must be made using similar procedures currently used in examining multistate or global insurers or insurance groups.

Exemption

8. Provides an exemption if both apply:
 - a. The insurer has annual direct written and assumed premium less than \$500 million, and
 - b. The insurance group has annual direct written and assumed premium less than \$1 billion.

9. Stipulates that if an insurer qualifies for the exemption and the insurance group does not qualify, the summary report must include every insurer within the insurance group.
10. Stipulates that if an insurer does not qualify for the exemption but the insurance group qualifies, the only summary report to be submitted must be applicable to that insurer.
11. Permits an insurer to apply for a waiver from ORSA requirements and outlines the conditions for granting the waiver.
12. Authorizes the Director, aside from exemption status, to require an insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA summary report:
 - a. Based on certain unique circumstances,
 - b. If the insurer has risk-based capital for a company action level event, deemed to be in hazardous financial condition, or exhibits qualities of a troubled insurer.
13. Stipulates an insurer who subsequently no longer qualifies for the exemption has one year to comply with the ORSA requirements.

Confidentiality of ORSA documents

14. Specifies the ORSA summary report, or other information relating to an ORSA, that is in the possession of, obtained by, or disclosed to the Director are considered proprietary and contain trade secrets.
15. Asserts documents relating to an ORSA are confidential and privileged and not subject to public record, subpoena, or discovery or admissible in private civil action.
16. States the Director may use documents relating to an ORSA for the furtherance of any regulatory or legal action as a part of the Director's official duties and may not make the document public without the written consent of the insurer.
17. States the Director, or anyone acting under the authority of the Director who receives documents relating to an ORSA, is not allowed or required to testify in any private civil action concerning any confidential ORSA-related documents.

Miscellaneous

18. Authorizes the Director to share ORSA-related documents with other state, federal and international regulatory agencies, NAIC, and with any third-party consultants designated by the Director.
19. Allows the Director to receive ORSA-related documents from regulatory officials of other foreign or domestic jurisdictions and from NAIC, and acknowledge the confidentiality of the documents.
20. Requires the Director to enter in written agreement with NAIC or a third-party consultant that do all of the following:
 - a. Specify procedures and protocols regarding the confidentiality and security of shared information.
 - b. Specify that ownership of information shared remains with the Director and to be used at the direction of the Director.
 - c. Prohibit the storing of information.
 - d. Require prompt notice be given to an insurer whose confidential information is subject to a request or subpoena for disclosure or production.
 - e. Require to consent to intervention by an insurer in any judicial action.
 - f. Provide the insurer's written consent of a third-party consultant involvement.

21. Asserts the sharing of information by the Director does not constitute a delegation of regulatory authority, and the Director is responsible for the administration, execution, and enforcement of the ORSA requirement.
22. Specifies a waiver of any applicable privilege or claim of confidentiality in the documents does not occur as a result of disclosure to the Director or as a result of sharing.
23. Asserts ORSA-related documents in the possession of NAIC or a third-party consultant are confidential and privileged, not considered public record, and not subject to subpoena or discovery in evidence in any private civil action.
24. States failure to submit an ORSA summary report, without just cause, results in a penalty of \$500 for each day's delay in filing, capped at \$100,000. Monies collected are deposited into the state General Fund.
 - a. The Director may reduce the penalty if the insurer demonstrates a financial hardship.
25. Define pertinent terms.
26. Contains a severability clause.
27. Contains a delayed effective date of January 1, 2017.

ADDITIONAL INFORMATION

In 2011, NAIC adopted a new insurance regulation – an Own Risk and Solvency Assessment (ORSA). According to NAIC an [ORSA](#) is an internal process undertaken by an insurer of insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios.

The Risk Management and Own Risk and Solvency Assessment Model [Act](#) went into effect January 2015 and is intended to provide direction and uniformity to identifying, assessing, monitoring, prioritizing, and reporting on material and relevant risk to insurers and insurance groups. ORSA will apply to any insurer that writes more than \$500 million of annual direct and assumed premium and insurance groups that collectively write more than \$1 billion of annual direct and assumed premium. Additionally, the model act establishes confidentiality provisions for ORSA-related information that address the sensitive nature of the information contained in the reports including for proprietary and trade secret information ([America's Health Insurance Plans](#)).